

UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Special Directive No. 22-13, Notice No. 1]

**Special Directive Under 49 U.S.C. § 5329 and 49 CFR Parts 670 and 674
Required Actions to Address Findings from the Safety Management Inspection Conducted at the
Massachusetts Bay Transportation Authority**

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

SUMMARY: FTA issues Special Directive 22-13 to require the Massachusetts Department of Public Utilities (DPU) to oversee the implementation of the four Special Directives issued to the Massachusetts Bay Transportation Authority (MBTA) that address findings documented in FTA's Safety Management Inspection (SMI) report released on August 31, 2022. DPU must take action to increase its technical capacity and its ability to oversee MBTA's corrective actions to address the pattern of safety incidents and safety findings concerning workforce management, prioritization of safety management information, effectiveness of safety communication, and operating conditions and policies, procedures, and training.

FOR FURTHER INFORMATION CONTACT: For program matters, Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer, telephone (202)-366-1783 or joseph.delorenzo@dot.gov; for legal matters, Emily Jessup, Attorney Advisor, FTA, telephone 202-366-8907 or emily.jessup@dot.gov.

SUPPLEMENTARY INFORMATION:

The DPU is the State Safety Oversight Agency designated by the Commonwealth of Massachusetts pursuant to 49 CFR § 674.13. FTA last certified DPU in 2018 as the agency responsible for overseeing rail fixed guideway safety in the Commonwealth of Massachusetts and for carrying out FTA's State Safety Oversight (SSO) Rule, 49 CFR part 674.

As set forth in Section 12(a) of Title XXII, Chapter 159 of the Massachusetts General Laws, DPU has the power to supervise and regulate the transportation or carriage of persons or property, or both, by railroads, street railways, electric railroads, and trackless trolleys between points within the Commonwealth of Massachusetts. In the exercise of its oversight authority, DPU can take actions including, but not limited to, review of Corrective Action Plans (CAPs) submitted by MBTA, oversight of MBTA's implementation of corrective actions, issuance of Orders, or the undertaking of any other action or enforcement proceeding authorized under State law, including judicial actions authorized under Sections 16 and 40 of Title XXII, Chapter 159 of the Massachusetts General Laws.

The MBTA is a division of the Massachusetts Department of Transportation (MassDOT), providing heavy rail (subway), bus, commuter rail, ferry, and paratransit service to eastern Massachusetts and parts of Rhode Island. While MBTA has recently embarked on a significant program of capital improvements,

the agency faces challenges in maintaining its aging infrastructure in a state of good repair and managing the ongoing operations of its complex equipment and systems. These challenges require greater focus, assessment, and resource prioritization, at all levels of MBTA to ensure that the system remains safe for both passengers and workers.

FTA conducted a Safety Management Inspection (SMI) of the MBTA rail transit system management, operations, and maintenance programs, between April 14 and June 30, 2022, to address an escalating pattern of safety incidents and concerns on the MBTA's rail transit system, including rates and numbers of derailments, collisions, and passenger and employee injury events significantly exceeding industry average and peer-based assessments.

FTA published the SMI report on 08/31/2022. In the report, FTA issued a total of 20 findings to the MBTA across the following four categories:

1. Category 1 – Managing the impact of operations, maintenance, and capital project requirements on the existing workforce
2. Category 2 – Prioritization of safety management information
3. Category 3 – Effectiveness of safety communication
4. Category 4 – Operating conditions and policies, procedures, and training

FTA's SMI report also addressed deficiencies FTA identified in the DPU's implementation of its SSO program, which limit its ability to provide effective safety oversight of MBTA. FTA reviewed DPU's organization, staffing, and technical capacity to oversee a rail transit agency of the size and complexity of the MBTA. FTA's SMI assessed the financial and legal relationship between DPU and MBTA. FTA also evaluated DPU's actions to oversee implementation of MBTA's Agency Safety Plan and Safety Management System, and assessed opportunities for DPU's SSO program to conduct more active and engaged oversight of MBTA's rail transit system. This Special Directive addresses findings FTA identified in the DPU's implementation of its SSO program and referenced in the SMI report as Category 5- Safety Oversight of MBTA's Rail Transit System.

Use of Available Resources

FTA's SSO regulation requires that each State demonstrate that it has determined an appropriate staffing level for the SSO agency commensurate with the number, size, and complexity of the rail transit system(s) in the State. As part of FTA's 2019 SSO audit, FTA found that DPU did not have a staffing level commensurate with the actual oversight needs of MBTA. As a result, FTA required DPU to develop, submit, and implement a revised workload assessment that reflects an appropriate staffing level for overseeing the MBTA, a revised technical training plan, and a plan for hiring and training personnel and/or contractors to fill the identified staffing needs.

Since that time, DPU has expanded both its staff and the agency's technical capacity to conduct oversight activities. DPU has a full-time SSO Director and six full-time equivalent (FTE) field staff, including two Compliance Officers, three Engineers, and one Auditor. DPU also has considerable engagement from DPU's Director of Transportation Oversight and, more recently, from DPU's Chairman. DPU also has access to contractor resources to provide additional expertise in rail transit disciplines.

While DPU has increased its staff from 2019, many DPU employees are relatively new and still learning

SSO requirements and activities. Agency activities have focused on onboarding, training, and building competency in MBTA systems and requirements. FTA's SMI finds that DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution. FTA finds that the DPU is actively engaged in overseeing MBTA's safety event investigations and has overseen an expanded number of corrective actions submitted by MBTA to address findings from these investigations (from 4 in 2019, to 12 in 2020, to 42 in 2021). However, FTA remains concerned that the DPU has not utilized its existing regulatory and statutory enforcement authority to ensure the timely resolution and closure of the related Corrective Action Plans.

Legal and Financial Independence

The SSO regulation requires an SSOA to be financially and legally independent from any rail transit system under its oversight jurisdiction, unless the Administrator has issued a waiver of this requirement. During the initial SSO certification review, FTA verified DPU's independence from MBTA through review of enabling legislation and organizational charts for both agencies. FTA reviewed DPU's independence from MBTA again during the 2019 SSO audit. Since that time however, the Fiscal Management and Control Board has been replaced by a new Board for MBTA, consisting of seven members, including the Secretary of Transportation, who reports directly to the Governor. The remaining Board Members are appointed by the Governor. As a result, FTA finds that DPU must review its independence from MBTA, given shared agency reporting relationships to the Governor and the Governor's role in appointing MBTA Board Members and approving DPU's three-member Commonwealth Utilities Commission

Validation of MBTA's Fatigue Management Approach

A major finding of FTA's SMI relates to the excessive hours worked by MBTA personnel throughout the rail transit agency. FTA's Special Directives 22-6 and 22-7 focus on this issue for rail transit motorpersons and MBTA personnel working in the Operations Control Center. To ensure that this potential safety concern is addressed for other classifications of employees at MBTA, including rail transit officials, infrastructure maintenance and engineering personnel, and vehicle maintenance and engineering personnel, FTA directs DPU to use its oversight authority to assess this issue and require corrective actions if the agency finds it is warranted to address safety concerns at MBTA.

Ability to Address Safety Issues and Concerns Identified during the SMI

FTA expects DPU to carry out its oversight program using its authority, while working with FTA and MBTA to ensure that the safety findings and required actions identified as part of the SMI, and documented in Special Directives 22-9 through 22-12, are addressed and resolved in a timely manner. To complete this work, FTA expects DPU to:

- adopt FTA's findings and required actions, to the extent such adoption is necessary to ensure DPU oversight and closeout of these items in coordination with FTA;
- review and approve Corrective Action Plans submitted by MBTA to address Special Directives 22-9 through 22-12;
- oversee MBTA's implementation of these corrective actions; to verify and close out implementation of corrective actions, in coordination with FTA; and

- use its authority to issue Orders, or undertake any other action or enforcement proceeding authorized under State law, including judicial actions authorized under Sections 16 and 40 of Title XXII, Chapter 159 of the Massachusetts General Laws, as necessary to ensure completion of verifiable corrective actions by MBTA.

This Special Directive identifies actions that DPU must take to provide effective safety oversight of MBTA's rail transit operations to ensure the safety of the MBTA's riders and employees. Consistent with 49 CFR Part 674, FTA will continue to monitor the adequacy of the DPU's oversight activities and ensure that the MBTA is implementing safety-critical required actions to address FTA's immediate safety concerns.

In addition, FTA will provide technical assistance to DPU as it initiates appropriate actions to ensure timely progress towards exercising effective oversight of MBTA.

DIRECTIVE AND REQUIRED ACTIONS:

In accordance with 49 U.S.C. § 5329 and 49 CFR Part 670, FTA makes the following findings and directs DPU to take the following specific actions:

| Category 5: Safety Oversight of MBTA's Rail Transit System | | | |
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| Findings | | Tracking # | Required Actions |
| Finding 1 | DPU does not use its available resources as effectively as it could to support field observations, audits, and inspections of MBTA's rail transit system to identify safety deficiencies and require their immediate resolution. | FTA-22-DPU-CAT5-1.A | DPU must update its workload assessment to reflect the results of the SMI and address FTA's Special Directives 22-8 and 22-13. |
| | | FTA-22-DPU-CAT5-1.B | DPU must match its resources to those identified in its updated workload assessment. |
| | | FTA-22-DPU-CAT5-1.C | DPU must update its technical training plan, and, if bringing on new resources, must develop a plan for hiring and training personnel and/or contractors to fill the identified staffing needs. |
| | | FTA-22-DPU-CAT5-1.D | DPU must review and update its processes and thresholds for using its existing enforcement authority to ensure timely resolution of CAPs or other required actions for safety. |
| Finding 2 | The DPU must examine and ensure its organizational and legal independence from the MBTA. | FTA-22-DPU-CAT5-2 | DPU must complete a legal assessment regarding its organizational independence from MBTA. This assessment must include review of organizational mechanisms, including recusals, limited reporting relationships, and other features that provide legal separation between the two agencies and ensure DPU's independence to take enforcement action against MBTA. |
| Finding 3 | DPU has not validated MBTA's fatigue management approach for rail transit officials and maintenance and engineering personnel. | FTA-22-DPU-CAT5-3 | DPU must conduct an assessment and determine if additional action is required. If DPU finds that additional action is needed to reduce service hours to ensure the safety of MBTA employees and passengers, then DPU must use its own authority to require this action. |

| Category 5: Safety Oversight of MBTA's Rail Transit System | | | |
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| Findings | | Tracking # | Required Actions |
| Finding 4 | DPU has not demonstrated an ability to address safety issues and concerns identified during FTA's SMI. | FTA-22-DPU-CAT5-4.A | DPU must adopt FTA's findings and required actions in Special Directives 22-9 through 22-12. |
| | | FTA-22-DPU-CAT5-4.B | DPU must, in coordination with FTA, require, review, and approve corrective action plans from MBTA to address FTA's findings and required actions in Special Directives 22-9, 22-10, 22-11 and 22-12, and oversee the timely implementation and close-out of these CAPs. |
| | | FTA-22-DPU-CAT5-4.C | DPU must identify the specific activities that it will undertake to ensure MBTA's completion of the required actions, a milestone schedule for completion of MBTA's required actions, and the parties at DPU and MBTA responsible for completing the required actions. |

Thirty (30) days after the date of this Special Directive, DPU must submit Corrective Action Plans to FTA that demonstrates the specific actions DPU will take to address actions specified in this Special Directive and if necessary, a milestone schedule for completing each activity; the responsible parties for action and their contact information; and the verification strategy for ensuring the completion of required work.

FTA will review and approve (with revisions as necessary) DPU's CAPs and will monitor the DPU's progress in resolving each finding and required action.

FTA will continue to conduct weekly meetings with DPU to review its progress until such time as FTA determines that these meetings are no longer needed or may be conducted with less frequency.

PETITION FOR RECONSIDERATION

As set forth in 49 CFR § 670.27(d), DPU has thirty calendar days from the date of this Special Directive to petition for reconsideration with the FTA Administrator. The petition must be in writing and signed by the Chair of DPU and must include a brief explanation of why DPU believes the Special Directive should not apply to it or why compliance with the Special Directive is not possible, is not practicable, is unreasonable, or is not in the public interest. In addition, the petition must include relevant information regarding the factual basis upon which the Special Directive was issued, information in response to any alleged violation or in mitigation thereof, recommend alternative means of compliance for consideration, and any other information deemed appropriate. Unless explicitly stayed or modified by the Administrator, this Special Directive will remain in effect and must be observed pending review of a petition for reconsideration.

Within ninety (90) days of receipt of the petition, the Administrator will provide a written response. In reviewing the petition, the Administrator shall grant relief only where the DPU has clearly articulated an alternative action that will provide, in the Administrator's judgment, a level of safety equivalent to that provided by compliance with this Special Directive. In reviewing any petition for reconsideration, the Administrator shall grant petitions only where DPU has clearly articulated legal or material facts not in evidence at the time of this Special Directive.

ENFORCEMENT

Violation of this Special Directive or the terms of any written plan adopted pursuant to this Special Directive in accordance with FTA's authorities under 49 U.S.C. § 5329 may result in a determination by FTA that DPU's State Safety Oversight Program does not meet the requirements of 49 U.S.C. § 5329(e), and attendant financial penalties, including: (1) withholding SSO formula grant funds from DPU; (2) withholding up to five percent of Massachusetts' Urbanized Area Formula Funding authorized under 49 U.S.C. § 5307; or (3) requiring MBTA to spend up to one hundred percent of Federal funding under 49 U.S.C. Chapter 53 only for safety-related improvements until DPU's SSO Program can be certified.

Issued on: August 31, 2022



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U.S. Department of Transportation